

E-Filed 7/31/12

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WAYNE WILLIE SMITH,
Petitioner,

No. C 11-4418 RS (PR)

ORDER OF DISMISSAL

v.

ROBERT H. TRIMBLE, Warden,
Respondent.

INTRODUCTION

This is a federal habeas corpus action filed pursuant to 28 U.S.C. § 2254 by a *pro se* state prisoner. For the reasons stated herein, the action is DISMISSED.

DISCUSSION

In the instant petition, petitioner challenges convictions he received in 2008 in the San Francisco County Superior Court. In 2011, petitioner filed a petition in this Court (No. 11-3918 RS) in which he challenged the same convictions. This first filed petition (11-3918) is pending. The instant petition (11-4418), then, is second or successive to the earlier petition.

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1 In order to file a second or successive petition, the petitioner must obtain an order
2 from the court of appeals authorizing the district court to consider the petition. *See* 28 U.S.C.
3 § 2244(b)(3)(A). Because petitioner has not shown that he has received such authorization,
4 the instant petition must be dismissed as second or successive to the prior-filed petition.
5 Accordingly, the petition is DISMISSED WITH PREJUDICE.

6 A certificate of appealability will not issue. Reasonable jurists would not “find the
7 district court’s assessment of the constitutional claims debatable or wrong.” *Slack v.*
8 *McDaniel*, 529 U.S. 473, 484 (2000). Petitioner may seek a certificate of appealability from
9 the Court of Appeals.

10 Respondent’s motion to dismiss the petition as duplicative (Docket No. 12) is
11 GRANTED. Respondent’s motion to dismiss the petition on exhaustion grounds (Docket
12 No. 10) has been withdrawn (Docket No. 11). The Clerk shall enter judgment in favor of
13 respondent, terminate Docket Nos. 10, 11, and 12, and close the file.

14 **IT IS SO ORDERED.**

15 DATED: July 31, 2012


RICHARD SEEBORG
United States District Judge